

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DALE JOSEPH CLARK,

Petitioner,

Case No. 05-CV-71043-DT

v.

KURT JONES,

Respondent,

/

**ORDER REQUIRING RESPONDENT TO FILE AN ANSWER AND THE RULE 5
MATERIALS WITHIN TWENTY-EIGHT DAYS OF THE COURT'S ORDER**

On December 5, 2005, the court denied Respondent's request to dismiss Petitioner's habeas petition on exhaustion grounds and ordered Respondent to file a supplemental answer which addressed the merits of Petitioner's claims within sixty days of the court's order. Respondent was also ordered to file any Rule 5 materials which had not already been provided to the court at the time that it filed its supplemental answer. To date, respondent has failed to comply with the court's order.

A habeas corpus petitioner who challenges the legality of his state custody is entitled to reasonably prompt disposition of his petition. See *Ukawabutu v. Morton*, 997 F. Supp. 605, 610 (D.N.J. 1998). The court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to Petitioner's habeas petition. See *Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001). 28 U.S.C. § 2243. In light of the amount of time that has passed in this case without Respondent filing a supplemental answer, the court orders Respondent to file its

supplemental answer to the petition for writ of habeas corpus within twenty-eight days of this order.

The court also orders Respondent to provide any the Rule 5 materials which it has not already provided at the time it files its supplemental answer. The habeas corpus rules require respondents to attach the relevant portions of the transcripts of the state court proceedings, if available, and the court may also order, on its own motion, or upon the petitioner's request, that further portions of the transcripts be furnished. *Burns v. Lafler*, 328 F. Supp. 2d 711, 717 (E.D. Mich. 2004); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Based upon the foregoing, the court orders Respondent to file its supplemental answer and to produce any additional Rule 5 materials within **twenty-eight (28) days** of the date of this order or show cause why he is unable to comply with the order.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 6, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 6, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

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